

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
DEARBORN RIVER BASIN (41U)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Nancy M. Barnes; Richard J. Barnes

**CASE 41U-0128-R-2023**  
41U 30130961

NOTICE OF INTENT TO APPEAR: Diamond Bar X  
Montana Limited Partnership

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Richard J. Barnes and Nancy M. Barnes are the record owners of claim 41U 30130961.
2. Claim 41U 30130961 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41U DECREE ISSUED 05/10/1984.  
THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO  
SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.  
THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

3. Diamond Bar X Montana Limited Partnership filed a Notice of Intent to Appear for claim 41U 30130961, stating:

This claim does not appear to reflect historical use. It is unclear what development the water right is attempting to claim. The claim appears to assert an interest in another water right owned by other parties.

4. The information on the Statement of Claim indicates the claim was first used on January 24, 1980:

13. TYPE OF HISTORIC RIGHT: ☒ Decreed ☐ Filed Appropriation ☐ Use Date of first use: 1/24/1980  
Attach copies of the decree, record of filing, or proof of use right.

5. On May 8, 2023, Claimants Richard J. Barnes and Nancy M. Barnes filed a Request to Withdraw Statement of Claim or Interest in Statement of Claim. (Doc.1 4.00)

### PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. “Claim” or “Statement of Claim” means a sworn statement of claim for an existing water right, as defined in § 85-2- 224, MCA, filed with the department upon order of the Montana Supreme Court. Rule 2(a)(12), W.R.C.E.R.

3. “Existing Water Rights” means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law. Rule 2(a)(23), W.R.C.E.R. Pursuant to Rule 1(a), W.R.Adj.R.,

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1 “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

The Montana Water Court has exclusive authority to adjudicate claims of exiting water rights.

**RECOMMENDATION**

1. Claim 41U 30130961 should be dismissed as it has been withdrawn by Claimants Richard J. Barnes and Nancy M. Barnes.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Electronic Service:**

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Nancy M. Barnes  
Richard J. Barnes  
1705 Verde Dr  
Great Falls 59405-4126

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
DEARBORN RIVER  
BASIN 41U**

**Water Right Number:** 41U 30130961 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** DISMISSED

**Owners:** RICHARD J BARNES  
1705 VERDE DR  
GREAT FALLS, MT 59405 4126  
  
NANCY M BARNES  
1705 VERDE DR  
GREAT FALLS, MT 59405 4126

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** DOMESTIC

**Flow Rate:**

**Volume:**

**Source Name:** SPRING, UNNAMED TRIBUTARY OF FALLS CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.